

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2009-0563

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

STANISLAUS ALMOND RANCH, LLC
LAKE ROAD GRIZZLY RANCH, LLC
STANISLAUS COUNTY

This Complaint is issued to Stanislaus Almond Ranch, LLC, and Lake Road Grizzly Ranch, LLC (hereafter Discharger) pursuant to California Water Code (CWC) section 13350, which authorizes the imposition of Administrative Civil Liability (ACL), and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated conditions of the *Coalition Group Conditional Waiver of Waste Discharges Requirements for Discharges from Irrigated Lands* (Irrigated Lands Conditional Waiver)(Order R5-2006-0053) and provisions of Cleanup and Abatement Order R5-2008-0701 by failing to implement management practices to control the discharge of highly turbid water. These violations have resulted in the discharge of highly turbid water to an unnamed tributary to Peaslee Creek, to Peaslee Creek, and subsequently to the Tuolumne River.

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds, with respect to the Discharger's acts, or failure to act, the following:

Background

1. The Discharger is the owner and developer of the Stanislaus Almond Ranch, LLC, and Lake Road Grizzly Ranch, LLC, a roughly 1,000-acre, contiguous almond orchard located in Stanislaus County and consisting of Assessor's Parcels 020-008-012, 020-010-003, and 020-010-004 (owned by Stanislaus Almond Ranch, LLC), and 020-008-013 (owned by Lake Road Grizzly Ranch, LLC). These parcels will hereafter be collectively referred to as the Property. The Property was used as dry land pasture until 2007, when it was graded in preparation for planting almonds. The topography is rolling hills with slopes of 0 to 75 percent. The soils are fine textured and susceptible to erosion. The Natural Resource Conservation Service SSURGO Data, 2007, lists the potential for erosion as low for the lowlands and high to very high for the hills. The majority of the Property is hilly, with erosion potential in the high to very high range.
2. The Property drains to an unnamed tributary to Peaslee Creek, which is a tributary to the Tuolumne River. As described in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan), the existing and potential beneficial uses of the Tuolumne River are municipal and domestic water supply, agricultural supply, hydropower generation, water contact recreation, non-contact recreation, cold and warm fresh water habitat, cold water spawning, and wildlife habitat. Pursuant to the Basin Plan, the beneficial uses of the Tuolumne River apply to its tributaries, including Peaslee Creek.

3. Peaslee Creek flows into a section of the Tuolumne River that has been designated under Fish and Game Code 1505 as a spawning area for several fish species. This section of the river has also been identified as winter Steelhead Trout and Chinook Salmon habitat.

Legal Provisions

4. On 25 August 2007, the Discharger enrolled the Property in the East San Joaquin Water Quality Coalition, thus obtaining regulatory coverage under the Irrigated Lands Conditional Waiver.
5. Definition 18 of Attachment A to the Irrigated Lands Conditional Waiver defines "Water Quality Standards" as water quality objectives in the Central Valley Water Board's Basin Plans, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by U.S. EPA, and/or water quality objectives in other applicable State Water Board plans and policies.
6. The Irrigated Lands Conditional Waiver contains the following condition:

ATTACHMENT B: TERMS AND CONDITIONS

- A.10. Dischargers who are participating in a Coalition Group shall implement management practices, as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the state, and prevent nuisance.
7. Cleanup and Abatement Order R5-2008-0701 (issued on 10 March 2008) states, in relevant part:

IT IS HEREBY ORDERED THAT, pursuant to CWC sections 13267 and 13304, Stanislaus Almond Ranch, LLC and Lake Road Grizzly Ranch, LLC shall:

 1. Immediately take all actions to cease the discharge of sediment and other wastes to waters of the state, including but not limited to Peaslee Creek and its tributaries, and to the Tuolumne River.
8. The Basin Plan includes the following water quality objective for turbidity:

Turbidity

Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributable to controllable water quality factors shall not exceed the following limits:

- Where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU.
- Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.
- Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.

- Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

9. CWC section 13350 states, in part:

(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

...

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

10. CWC section 13327 states, in relevant part:

In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

11. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

Violation Chronology

12. Prompted by observations of sediment-laden surface water flows from Peaslee Creek into the Tuolumne River, Turlock Irrigation District (TID) staff investigated storm water runoff from the Property on 11, 23, 25, and 28 January 2008. The storm water runoff was the result of a rain event on 4 January 2008 and a seven-day rain event that began

on 22 January, where about three inches of rain fell. TID staff obtained turbidity measurements from Peaslee Creek upstream of the Property's graded area and from the tributary of Peaslee Creek near and downstream of the graded area. Turbidity measurements taken on 23 January 2008 were 167 nephelometric units (NTU) upstream of the graded area and 11,200 NTU downstream; a turbidity measurement taken on 25 January 2008 was 976 NTU downstream of the graded area; and turbidity measurements taken on 28 January 2008 were 127 NTU upstream of the graded area and 2,240 NTU downstream. Photos taken on 11 January 2008 show a lack of effective erosion and sediment controls at the property. Photos taken on 23 January 2008 show the turbid surface water conditions to which the Property caused or contributed. These photos are included as Attachment A to this Complaint.

13. TID staff collected turbidity data from the Tuolumne River upstream and downstream of the Peaslee Creek confluence on 23, 25, and 28 January 2008. Turbidity measurements taken on 23 January 2008 were 16 NTU at the Highway 132 (Basso Bridge) crossing of the Tuolumne River (about two miles upstream of the Peaslee Creek confluence) and 965 NTU at the Turlock Lake State Recreation Area (TLSRA; about three miles downstream of the Peaslee Creek confluence); turbidity measurements taken on 25 January 2008 were 9 NTU at the Highway 132 crossing of the Tuolumne River and 143 NTU at the TLSRA; and turbidity measurements taken on 28 January 2008 were 12 NTU at the Highway 132 crossing of the Tuolumne River and 1,614 NTU at the TLSRA. The flow rates for the Tuolumne River near the Peaslee Creek confluence on 23, 25, and 28 January 2008 were measured as 178, 164, and 167 cubic feet per second (cfs), respectively. The turbidity evidence indicates discharges from the Property caused or contributed to violations of Basin Plan Water Quality Objectives.
14. On 21 February 2008, the Stanislaus County Public Works Department informed Central Valley Water Board staff of grading activities at the Property and forwarded information from TID staff regarding water quality impacts caused by the Property's graded area. The forwarded information included photographs taken in January 2008 of the graded area and turbid waters downstream (see Attachment A).
15. On 25 February 2008, TID staff again investigated surface water runoff from the Property. The runoff was the result of a five-day rain event that began on 19 February, where about one and a half inches of rain fell. Turbidity measurements taken on 25 February were 92 NTU in Peaslee Creek upstream of the Property's graded area, and 2,600 NTU in the tributary to Peaslee Creek and downstream of the graded area. Turbidity measurements taken from the Tuolumne River on this date were 18 NTU at the Highway 132 crossing of the Tuolumne River and 453 NTU at the TLSRA. Photos taken by TID staff on this date show large exposed areas with eroding slopes at the Property and sediment-laden storm water discharging from Peaslee Creek to the Tuolumne River. These photos are included with Attachment A to this Complaint. The flow rates for the Tuolumne River near the Peaslee Creek confluence on 25 February 2008 was measured as 172 cfs. The turbidity evidence indicates the discharge from the Property caused or contributed to a violation of Basin Plan Water Quality Objectives for turbidity.
16. On 10 March 2008, the Executive Officer of the Central Valley Water Board issued Cleanup and Abatement Order R5-2008-0701 to the Discharger. This Order required the

Discharger to immediately take action to cease the discharge of sediment and other wastes to waters of the state. The Order also required the Discharger to submit a *Stabilization and Cleanup Plan* and a subsequent *Completion Report* to document full plan implementation. The former plan, which was submitted on 31 March and modified on 2 April 2008, stated that the Discharger would replace and improve a check dam that had failed; install additional hay bales in the vicinity of the dam; install a drainage swale to prevent sediment from discharging to Lake Road; manually remove silt from Peaslee Creek; rake and re-seed an eroded area south to Peaslee Creek; and stabilize the graded orchard by allowing grass to grow between the tree rows. The Discharger submitted a completion report on 9 June 2008.

17. On 4 November 2008, Central Valley Water Board staff spoke to Mr. Mike Staak, the Property's superintendent, about winter stabilization for the Property and whether or not the Property's Cleanup and Abatement Order should be rescinded. Board staff reminded Mr. Staak of the need to stabilize the Property through implementation of effective erosion and sediment controls. The Cleanup and Abatement Order was not rescinded, because almond orchard planting was still occurring at the Property.
18. On 25 January 2009, Department of Fish & Game (DFG) staff passed by the Property on Lake Road and noticed sediment-laden storm water discharges from the Property to Peaslee Creek. The turbidity for storm water runoff leaving the Property en route to Peaslee Creek was measured at 1,200 NTU. The turbidity in the Tuolumne River upstream of the Peaslee Creek confluence was measured at 2 NTU. These turbidity measurements were similar to those taken on 25 January 2008. The Tuolumne River downstream of the Peaslee Creek confluence was not accessible for sampling on this date. The flow rate for the Tuolumne River near the Peaslee Creek confluence on 29 January 2009 was measured as 165 cfs. Following this inspection, DFG staff notified Central Valley Water Board staff of waste discharges from the Property. Photos taken by DFG staff on 25 January show sediment-laden storm water discharging from the Property, along with ineffective sediment controls. These photos are included as Attachment B to this Complaint.
19. On 26 January 2009, DFG staff and Central Valley Water Board staff conducted a joint investigation at the Property. The investigating staff found a lack of effective erosion and sediment control and significant discharges of sediment-laden storm water from the Property to Peaslee Creek and the Tuolumne River. The turbidity measurement from the Property to Peaslee Creek was measured at 781 NTU; and the turbidity in the Tuolumne River upstream of the Peaslee Creek confluence was measured at 4 NTU. These turbidity measurements were similar to those taken on 25 January 2008. The Tuolumne River downstream of the Peaslee Creek confluence was not accessible for sampling on this date. Photos taken during the 26 January 2009 inspection are included as Attachment C to this Complaint.
20. On 7 February 2009, DFG staff inspected the Property and documented the construction of a sediment dam on the Lake Road (north) side of the Property. On 14 February 2009, DFG staff inspected the Property after a three-day storm event, where about 0.8 inches of rain fell. DFG staff found that the sediment dam had failed, resulting in the discharge of sediment-laden storm water to Peaslee Creek and the Tuolumne River. The turbidity

of the storm water discharge from the Property to Peaslee Creek on 14 February was measured at 1,100 NTU. This turbidity measurement was similar to that taken on 25 January 2008. Following the 14 February inspection, DFG staff contacted the Discharger and informed him of the ineffective erosion and sediment controls at the Property and the associated waste discharges. Photos taken during DFG staff's 7 and 14 February 2009 inspections are included as Attachment D to this Complaint.

21. On 5 March 2009, Central Valley Water Board staff inspected the Property and found ineffective erosion and sediment controls, resulting in a significant sediment discharge to Lake Road. Central Valley Water Board staff subsequently contacted the Discharger and informed him of staff's concerns about the ineffective erosion and sediment controls at the Property. Photos taken during the 5 March inspection are included as Attachment E to this Complaint.
22. On 25 March 2009, Central Valley Water Board staff and DFG staff met at the Property with the Discharger's representative and the Property's superintendent (Mr. Mike Staack), and the Discharger's engineering consultant (Mr. Antonio Conti) to discuss site conditions and recent events. Staff emphasized the need for improvements in erosion and sediment controls and warned the Discharger that both agencies may pursue enforcement actions. Staff also observed that the onsite sediment dam was still blown out, and that there was minimal vegetative cover in the orchard areas. Photos taken during the 25 March inspection are included as Attachment F to this Complaint.
23. On 5 May 2009, Central Valley Water Board staff and DFG staff inspected the Property following a three-day rain event that began on 1 May, where about 0.8 inches of rain fell. The inspection was prompted by DFG staff observing a significant sediment load in the Tuolumne River. Staff observed significant erosion, a lack of effective erosion and sediment controls, and discharges of sediment-laden storm water from the Property. The onsite sediment dam was again found to be blown out. The turbidity measurement in the discharge from the Property was 6,900 NTU; turbidity in Peaslee Creek upstream of the Property's discharge was measured at 84 NTU; and the turbidity measurement in Peaslee Creek downstream of the Property's discharge was measured at 2,300 NTU. The flow rate for Peaslee Creek discharging into the Tuolumne River was measured at 12.5 cubic feet per second. The Tuolumne River was observed to have low turbidity upstream of the Peaslee Creek confluence. The turbidity measurements of discharge from the Property were higher than those taken on three of the four days in 2008 (see Findings 12 and 15). Photos taken during the 5 May inspection are included as Attachment G to this Complaint.
24. On 27 May 2009, DFG staff conducted a stream assessment of the water bodies affected by the multiple sediment releases from the Property. According to this assessment, sediment-laden runoff entering the tributary to Peaslee Creek, Peaslee Creek, and the Tuolumne River was detrimental to aquatic life. The DFG stream assessment is included as Attachment H to this complaint.

Summary of Violations and Maximum Penalty Calculation

25. The Discharger violated the Irrigated Lands Conditional Waiver by failing to implement effective management practices for erosion and sediment control, which resulted in the discharge of sediment-laden storm water from the Property. These waste discharges were observed by agency staff (i.e., TID, DFG or Central Valley Water Board staff) on 23, 25, and 28 January 2008, 25 February 2008, 25 and 26 January 2009, 14 February 2009, 5 March 2009, and 5 May 2009. The Discharger also violated the Irrigated Lands Conditional Waiver by causing or contributing to exceedances of Basin Plan Water Quality Objectives in the Tuolumne River on 23, 25 and 28 January 2008, and 25 February 2008, and in Peaslee Creek on 5 May 2009.
26. The Discharger violated Cleanup and Abatement Order R5-2008-0701 by, as of 10 March 2008, failing to immediately take action to cease the discharge of sediment and other wastes to waters of the state, including but not limited to Peaslee Creek and its tributaries, and to the Tuolumne River.
27. Pursuant to CWC section 13350, the maximum civil liability for violations of the Irrigated Lands Conditional Waiver and the Cleanup and Abatement Order is either \$5,000 per violation per day or \$10 per gallon of waste discharged. The evidence documented above indicates that the Discharger, at a minimum, failed to have adequate management practices for erosion and sediment control in place from 23 January 2008 through 25 February 2008 (34 days), and from 25 January 2009 through 5 May 2009 (101 days). The Cleanup and Abatement Order was in place during the 25 January 2009 through 5 May 2009 period, resulting in an additional 101 days of violations. Based on 236 days of violations, the Discharger has accrued a maximum civil liability of \$1,180,000.

Turbidity measurements indicate that sediment-laden storm water was discharged from the Property as a result of three rain events lasting a total of 14 days (i.e., 22 January thru 28 January 2008; 19 February thru 24 February 2008; and 1 and 2 May 2009). Using rainfall data gathered from the vicinity of the Property, Central Valley Water Board staff estimates the total sediment-laden storm water (i.e., waste) discharge from the Property for these three rain events to be 23,338,159 gallons. Based on this estimate, the Discharger accrued a maximum civil liability of \$233,381,590.

STANISLAUS ALMOND RANCH, LLC, AND LAKE ROAD GRIZZLY RANCH, LLC, ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of four hundred and five thousand dollars **(\$405,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **27/28/29 January 2010**, unless either of the following occurs by **14 December 2009**:

- a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **four hundred and five thousand dollars (\$405,000)**; or
 - b) The Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing in this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by
PAMELA CREEDON, Executive Officer

12 November 2009
Date

Attachment A: TID photographs from 11 & 23 January, and 25 February 2008

Attachment B: DFG photographs from 25 January 2009

Attachment C: Photographs from the 26 January 2009 inspection

Attachment D: DFG photographs from 7 & 14 February 2009

Attachment E: Photographs from the 5 March 2009 inspection

Attachment F: Inspection report and photographs from the 25 March 2009 inspection

Attachment G: Photographs from the 5 May 2009 inspection

Attachment H: DFG Stream Assessment

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Stanislaus Almond Ranch, LLC, and Lake Road Grizzly Ranch, LLC, (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0563 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **four hundred and five thousand dollars (\$405,000)** by check that references "ACL Complaint R5-2009-0563" made payable to the State Water Pollution Cleanup and Abatement Account. Payment must be received by the Central Valley Water Board by **14 December 2009**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)